IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

GOVERNMENT APPEAL No. 1866 of 2001
(Old No. 1325 of 1999)

The State

... Appellant

Versus

Shafiq S/o Latif & **three others**

... Respondents

Dated: May 16, 2007

Sri Amit Bhatt, learned Additional G.A. for the State
Sri Manish Arora, learned counsel for the respondents

HON. DHARAM VEER, J.

This appeal has been preferred against the judgment and order dated 24.12.1998 passed by Additional Chief Judicial Magistrate Roorkee in Criminal Case No. 271 of 1998, State s. Shafiq & others, under Section 5/25/27 of Arms act, whereby the respondents have been acquitted by learned ACJM, Roorkee by giving benefit of doubt.

2. Brief stated facts of the case are that on 01.11.1996, S.O. Kailashchand, Sub-Inspector Rajbeer Singh, P.S. Jwalapur and Constable Rakesh Sharma, Constable Avnish Kumar were in search of accused Nazim and others and at 5:00 A.M., as soon as they reached near Gangnahar Bridge, P.S. Gangnaher, Roorkee, then they received the information through an informer that in the verandah of a house of Village Mohammadpur, four persons have installed a factory of manufacturing Pistols. On this information, when Radhey Mohan Bhardwaj, Circle Officer, Roorkee along with other police personnel along with informer, then informer after locating the said house told that the

factory of manufacturing pistols was in that house and thereafter the informant gone from there. On the direction of Circle Officer, the said house was surrounded from all the sides and S.O. Kailash Chandra from the top of the wall saw that in the electric light in verandah, four persons were manufacturing weapons. After that, all the four respondents were caught by the police at 5:45 A.M. while manufacturing the weapons. Thereafter, a charge sheet u/s 5/25/27 of the Arms Act, 1959 was produced in the court. The charge was framed u/s 5/25/27 of the Arms Act, 1959 and was explained to the respondents, who pleaded not guilty and claimed to be tried. The prosecution in order to prove its case examined P.W.1 Kailash Chand, P.W.2 Chintamani, P.W.3 Rajvir Singh and P.W.4 Bhagwan Yadav. The learned ACJM, Roorkee after perusing the entire evidence on record vide his judgment and order dated 24.12.1998 acquitted the respondents from the offence punishable u/s 5/25/27 of the Arms Act. Feeling aggrieved against the said judgment and order, the State has filed the present appeal.

3. I have heard Sri Amit Bhatt, learned Addl. G.A. for the appellant and perused the judgment passed by the Additional Chief Judicial Magistrate, Roorkee.

4. On 12.04.2007, this Court directed for summoning the lower court record and in compliance of that order, Officer In-charge A.C.J.M., Roorkee vide his report dated 4.5.2007 has informed that as per the report from Officer In-charge, Record Room (Criminal), Saharanpur, the record of the Criminal Case No.271 of 1998 has been weeded out as per rules. Learned Addl.

G.A. for the State stated that after passing of the order dated 24.12.1998 which is under challenge, now the period of 9 years has been expired. Sri Amit Bhatt, learned Addl. G.A. and Sri Manish Arora, learned counsel for the respondents also submitted that now the reconstruction of the record or retrial is not possible. In a judgment rendered by Allahabad High Court in the case of *Aziz Khan Vs. State of U.P. reported in ACC 1992 (29) 223,* it was held as under:-

> ***"Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence."***

5. Even otherwise, after perusing the judgment passed by learned ACJM, Roorkee, I do not find any incorrectness, illegality or impropriety in the impugned judgment and order dated 24.12.1998 passed by learned Additional Chief Judicial Magistrate, Roorkee.

6. In view of the above, the appeal is dismissed accordingly.

(Dharam Veer, J.)

May 16, 2007
Rajeev Dang